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The Commonwealth of Massachusetts
Executive Office of Public Safety
Fire Safety Commission

Automatic Sprinkler Appeals Board

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CHAIRMAN

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VICE CHAIR

Docket # 2005-13
463-465 Breckwood Blvd
Springfield, Massachusetts 01109

AUTOMATIC SPRINKLER APPEALS BOARD
DECISION AND ORDER

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G1/2 and Chapter 6, section 201, relative to a determination of the Springfield Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by Father & Sons Pizza, Inc. (hereinafter referred to as the Appellant). The building, which is the subject of the order, is known as Sophia's Sports Bar. It is located at 463-465 Breckwood Blvd., Springfield, MA.

B) Procedural History

By a written notice dated March 7, 2005, the Springfield Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L. c. 148, s.26G1/2, which requires the installation of an adequate system of automatic sprinklers in certain buildings or structures. The building subject to the order is located at 463-465 Breckwood Blvd., Springfield, Ma. The Appellant filed an appeal of said order on April 22, 2005 and the Board held a hearing relative to this matter on July 6, 2005, at the Department of Fire Services, Stow, Massachusetts.

Tom Makris, the business owner and Attorney Benjamin M. Coyle, Esq. appeared on behalf of the Appellant. District Chief of Fire Prevention, John F. Cossaboom appeared on behalf of the Springfield Fire Department. Present for the Board were Maurice M. Pilette, Chairperson, Edward G. McCann, Paul Donga, Thomas Coulombe, Stephen D. Coan and Brian Gore. Steven Rourke was the attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the enforcement action of the Springfield Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2?

D) Evidence Received

1. Application for Appeal
2. Order of Notice from the Fire department
3. Notice of hearing to Appellant
4. Notice of hearing to Fire Department
5. Statement of Appellant
6. Joint Stipulation
7. Photos (1-10 Interior Photos and 11-18 Restaurant Photos)
8. A-B Interior Photo taken by Fire Department
9. Certificate of Inspection dated June 28, 2004

E) Subsidiary Findings of Fact

- 1) By Notice dated March 7, 2005, the Springfield Fire Department issued a written Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 463-465 Breckwood Blvd., Springfield, MA in accordance with the provisions of M.G.L. c. 148, s.26G1/2. Said notice indicated that the establishment occupied by the Appellant's business was subject to the provisions of said s.26G1/2. The Appellant before the Board is the owner of the business (but not the building) which occupies the subject building. Although the building owner was notified of the determination of the Fire Department, said building owner neither appeared at the hearing nor filed an appeal of said determination.
- 2) The establishment at issue before this Board, known as "Sophia's Sports Bar" is located within a strip mall. The establishment occupies two rooms which are connected by a single doorway. One of the rooms was described by the Appellant as a "bar" area. This area has in its center a bar area surrounded by bar stools with one area set aside for live entertainment. Additionally, there are high tables with chairs and a standing bar with no chairs. This area also features a "juke box", pool table area with one pool table, several electronic arcade games and several televisions for sports viewing purposes. There are numerous lights, signs and commercial ornaments promoting alcoholic beverages. The other area described by the Appellant as the "restaurant area" features a standup service bar area with no seats, and tables and booths with chairs. There are also several televisions for sports viewing purposes, and several commercial signs and ornaments promoting alcoholic beverages.

- 3) The Certificate of Inspection issued for the building on June 28, 2004 indicates that the establishment has a capacity of 140 persons. There is no separate capacity listed on said certificate for each room.
- 4) Said certificate of inspection indicates that the establishment has been designated as an “A-2” use group.
- 5) The establishment, which has been issued an entertainment license features a live karaoke entertainer approximately one time per week. The establishment reduces the lighting somewhat, but “not too low”.
- 6) The Appellant contends that the establishment is principally used as a restaurant and is therefore exempt from the provision of M.G.L. c. 148, s.26G1/2. Testimony indicates that the establishment serves meals, including but not limited to Pizza and sandwiches, as well as snacks type food. Appellant stated that 70 % of sales are from the service of food and 30% from liquor, however there was no documentation provided by the Appellant which reflects these figures. The Board notes that the Appellant provided a photograph that features a sign that announces the service of free Pizza during the hours of 4:00 p.m. and 6:00 p.m. Monday through Friday.
- 7) Testimony indicates that the “bar” area of the establishment is open until 2 a.m., 7 days a week and that the “restaurant” area is open until 3:00 a.m. on Wednesdays, Thursdays, Fridays and Saturday nights and closes at 12 a.m. on the other nights.
- 8) The Appellant testified that the business is located directly across the street from Western New England College.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of the 2nd paragraph of M.G.L. c. 148, s. 26G1/2, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, requires the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) The Inspection Certificate issued for this establishment on 6-28-04 indicates that the occupancy is classified as an “A-2” assembly occupancy with a legal capacity of 140 persons. This certificate

does not give different capacity limits for each of the two portions or rooms. The subject building is considered a public assembly with a capacity of 100 persons or more.

- 4) The legal classification of this establishment as an “A-2” assembly occupancy by the building official is significant. Under the provision of the State Building Code, 780 CMR, such a classification includes establishments that are “designed for occupancy as dance halls, nightclubs and for similar purposes” (see 780 CMR 303.3). Under 780 CMR, restaurants other than nightclubs, are classified within the A-3 use group (see 780 CMR 303.4). The A-2 classification is an important factor in determining whether this establishment is subject to the sprinkler requirements of M.G.L. c. 148, s. 26G1/2. However, this classification alone is not necessarily the only determining factor that this Board will look at. In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s.26G1/2. This new law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire which took place in February 2003. In said memorandum, this Board noted that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes”. This Board reviewed the legislative intent and background of the statute and concluded that there were certain characteristics typical of nightclubs, dancehalls and discotheques. The board indicated that such occupancies are characterized, but not limited to, the following factors:

- a) No theatrical stage accessories other than raised platform;
- b) Low lighting levels;
- c) Entertainment by a live band or recorded music generating above-normal sound levels;
- d) Later-than-average operating hours;
- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s.26G1/2. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 5) In its 1-10-05 memorandum the Board also acknowledged the existence of establishments that may feature characteristics of both a restaurant and a nightclub, dancehall discotheque or bar or similar occupancy. In determining whether or not such establishments are subject to the provisions of M.G.L. c.26G1/2 this Board indicated that it would look at such common sense factors such as:

- a) Does the restaurant establishment regularly and routinely serve meals on a daily basis?
- b) Does the establishment provide a bar, bar seating, bar standing and a bar tender for the purposes of serving alcoholic beverages directly to alcohol consuming customers?
- c) Does the bar and bar seating area have the ability to expand into the dinning area to accommodate special entertainment activities or increased capacity/density.
- d) If the establishment provides a bar and bar seating, are alcoholic beverages continuously served to customers more than one hour after full kitchen facilities have been closed?
- e) Is live or recorded music provided for dancing purposes or for a viewing audience? (does not include background dinner music)?
- f) Does the establishment provide special entertainment, including but not limited to: musical, theatrical, comedy, or sport viewing activities?
- g) Based upon the establishments name, décor, atmosphere, does a customer expect a bar or nightclub type establishment?
- h) Is the establishment or portions thereof routinely or regularly used for private or public functions for dancing, parties, celebrations, entertainment or performance purposes?
- i) Does the establishment have an entertainment license?

6) Based upon the evidence provided at the hearing, this establishment regularly and routinely serves meals on a daily basis. However, in looking at the characteristics as a whole, it also features many characteristics typical of an “A-2 like” occupancy and a bar.

7) The establishment provides live entertainment in the form of a karaoke on a routine and regular basis. The establishment has been issued an entertainment license for this purpose.

8) The establishment features later than average operating hours. The “bar” area of the establishment is open until 2 a.m., 7 days a week and the “restaurant” area is open until 3:00 a.m. on Wednesdays, Thursdays, Fridays and Saturday nights.

9) The establishment provides a bar, bar seating, bar standing and a bar tender for the purposes of serving alcoholic beverages directly to alcohol consuming customers. Alcoholic beverages are available to customers at all times whether or not they choose to eat a meal. The Board notes that the establishment provides free Pizza during the hours of 4-6 pm, Monday through Fridays. It is reasonable to conclude that the purpose of offering free food is to attract persons into the establishment to drink alcoholic beverages.

10) Based upon the establishments name, “Sophia’s Sports Bar”, décor and atmosphere, a customer can reasonably expect a bar or nightclub type establishment. . There are high tables with chairs and a standing bar with no chairs. The bar area features a “juke box”, a pool table several electronic arcade

games and several televisions for sports viewing purposes. There are numerous lights, signs and commercial ornaments promoting alcoholic beverages in both areas of the establishment.

- 11) Appellant further contends that the establishment consists of two separate portions (bar and restaurant areas) and that each area, if taken separately, is less than 100 persons thus exempting both portions from the provisions of s. 26G1/2. This argument is without merit. The building department established the capacity as 140 persons for the entire establishment. Since there is no separate capacity for each portion this board cannot conduct an independent analysis for each section for determining the capacity for s.26G1/2 purposes. Additionally, based upon the floor plan configuration and operational characteristics of this particular establishment, there is no legal or factual basis to consider the two areas separately. A common doorway connects both areas. The doorway is always open during hours of operation, allowing the occupants and activities to flow freely from one portion of the establishment to the other. Since there is no occupancy limit for each portion, it is possible, without violating occupancy laws, for all the occupants to gather in one portion of the establishment. This could result in a potential situation involving high occupant load density, overcrowding and/or blocked egress.

G. Decision and Order

Based upon the aforementioned reasoning and the evidence presented at the hearing, the Board by a majority vote, upholds the Order of the Springfield Fire Department to install sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s.26G1/2 and further orders the installation in accordance with statutory timeline:

1. The submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006); and
2. Complete installation within 3 years of the effective date of the act (by November 15, 2007).

H) Vote of the Board

Maurice Pilette, (Chairperson)	In favor
Paul Donga	In favor
Stephen D. Coan	In favor
Thomas Coulombe	In favor
Brian Gore	Against
Edward G. McCann	Against

I) Right of Appeal

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,

A handwritten signature in black ink, appearing to read "Maurice Pilette". The signature is fluid and cursive, with the first name "Maurice" written in a larger, more prominent script than the last name "Pilette".

Maurice Pilette, P.E.. Chairman

Dated: September 28, 2005

A copy of this Decision and Order was forwarded by certified mail, return receipt requested, to: Tom Makris, President, Father & Sons Pizza, Inc., d/b/a Sophia's Sports Bar, c/o Benjamin M. Coyle, Esq., Bacon & Wilson, 33 State Street, Springfield, Massachusetts 01103 **and by 1st class mail, postage prepaid, to:** District Chief of Prevention, John F. Cossaboom, Springfield Fire Department, 605 Worthington Street, Springfield, Massachusetts 01105-1112.